IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 16551 of 2007(U)

PETITIONER:

K.K.GIREESHKUMAR, AGED 51 YEARS,
S/O.K.KUTTAN (LATE), VARUVILAKATHU VEEDU,
T.C.1/1613, PAZHAYA ROAD, MEDICAL COLLEGE P.O.
THIRUVANANTHAPURAM.

BY ADV. SRI.B.S.SIVAJI

RESPONDENTS:

1. **STATE OF KERALA,**
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE SECRETARY,**
   MINISTRY OF LOCAL ADMINISTRATION DEPARTMENT,
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

3. **THE SECRETARY,**
   CORPORATION OF THIRUVANANTHAPURAM,
   THIRUVANANTHAPURAM.

4. **THE CHIEF TOWN PLANNER,**
   TOWN PLANNING OFFICE,
   KOTTARATHIL BUILDINGS,
   PALAYAM, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

W.P.(C).No.16551 OF 2007

Dated this the 5th day of June, 2007

JUDGMENT

Petitioner challenges Ext.P2. By Ext.P2, respondent Corporation has rejected the application for permission to construct building on two grounds. First ground is that it is against the scheme (Ext.P1). Second ground is that there is a proposal to widen the road. As far as the first objection is concerned, according to the petitioner, it is covered by Ext.P3 judgment following the Division Bench decision of this court in **Padmini v. State of Kerala** (1999(3)KLT 465).

2. I heard the learned counsel for the petitioner, learned counsel for the Corporation and the learned Government Pleader also.

3. There is no dispute by the learned counsel for the Corporation that as far as the first objection is concerned, it should

be governed by Ext.P3 judgment and the second objection is concerned, as correctly pointed out by the learned counsel for the petitioner that the matter is squarely covered by the judgment of the Division Bench in 1999(3)KLT 465.

In such circumstances, Ext.P2 is quashed and there will be a direction to the third respondent to take a decision on the application submitted by the petitioner if the plan is otherewise in order on condition that the petitioner submits an undertaking in the form of an affidavit stating clearly that if a notification under Section 4(1) of the Land Acquisition Act is promulgated within one year of issuance of the building permit, the petitioner will surrender the property including the building constructed without claiming any compensation for the building. It is made further clear that even thereafter if the Corporation or the Government wants to acquire the property for any genuine public purpose, this judgment will not stand in the way of doing so and under such event the respondents will give adequate compensation to the

petitioner. In considering the application, the third respondent will take note of the decision of this court in 1999(3)KLT 465. A decision will be taken by the third respondent in accordance with law within a period of one month from the date of receipt of a copy of this judgment.

K.M.JOSEPH
JUDGE

sv.